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SUPREME COURT, U.S.

No. 81-6912

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

DAVID J. SCHOLL, Appellant,

v.

RUDOLPH ANSELMI, R. A. HAKALA, and DORAN LUMMIS, as individuals and as THE WYOMING TAX COMMISSION and DANIEL C. LEACH, JR., as an individual and as the DIRECTOR OF THE MOTOR VEHICLE DIVISION, DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING, Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WYOMING

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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RUDOLPH ANSELMI, R. A. HAKALA, and DORAN LUMMIS, as individuals and as THE WYOMING TAX COMMISSION and DANIEL C. LEACH, JR., as an individual and as the DIRECTOR OF THE MOTOR VEHICLE DIVISION, DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING, Appellees.

MOTION TO DISMISS OR AFFIRM

The Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Wyoming on the grounds that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, that the appeal is not taken in conformity with statute and the Rules of this Court, that no substantial federal question is presented, that the judgment rests on an adequate non-federal basis and that several issues are moot. Rule 16.1.

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STATEMENT OF THE CASE

The Appellant David J. Scholl applied for renewal of his Wyoming driver's license on or about December 13, 1978, at Buffalo, Wyoming. The State of Wyoming Motor Vehicle Division officer in Buffalo requested that the Appellant complete the standard license application form, but Appellant refused to supply his social security number. The officer refused to issue the Appellant a driver's license because the form was not complete; however, the Appellant successfully completed all other requirements, including the examination, for issuance of a driver's license.

The Appellant also protested the Division requirement that license applicants must sign an Information Practices Statement. Signing of this form serves two functions: the signing confirms notice to applicants that the Division may make inquiry as to his or her physical and mental abilities to safely operate motor vehicles and investigate each applicant's prior driving records. The signing of the form also grants consent to the Division to obtain pertinent records from medical and psychiatric clinics and hospitals (including government hospitals such as those operated by the Veteran's Administration), Motor Vehicle Divisions in other states, law enforcement authorities and whatever other sources the Division believes may hold records pertinent to an applicant's ability to safely and competently operate motor vehicles. The Appellant did sign an Information Practices Statement on the date of his

application, however, and appended thereto the legend "I do not waive any Constitutional rights."

The Appellant thereafter communicated to the Motor Vehicle Division and to the members of the Tax Commission his reasons for refusing to disclose his social security number, which reasons are religious in nature. The Motor Vehicle Division director and the Tax Commission did not believe it appropriate to waive the requirement for disclosure of social security numbers, citing a need for uniform interstate record-keeping.

The Appellant applied to the District Court for a Writ of Peremptory Mandamus to compel the Motor Vehicle Division to issue a license to him without disclosure of the social security number. He also complained that signing of the Information Practices Statement by license applicants is not authorized by law and constitutes an invasion of Constitutionally-protected rights of privacy. The Division consented to issue a license to the Appellant pending resolution of the matter in District Court. The District Court issued an order on July 11, 1980, permitting the Appellant to operate a motor vehicle pending the final determination of the matter on the merits. The Appellant did not have a valid Wyoming driver's license during the interim period from December of 1978 to July 11, 1980.

The Appellant filed his Petition for Writ of Mandamus on June 2, 1980, joining prayers for relief in several forms, including:

a. That the Motor Vehicle Division

issue a renewed license to Petitioner;

B. That the Division invalidate and remove from its files all Information Practices Statements signed by applicants for licenses, and that subsequent applicants must be informed that they are not required to sign the Information Practices Statement;

c. That the Division cease requiring applicants to supply social security numbers on license application forms;

d. That the Division reimburse Petitioner for costs of bringing the action and for damages, including $150.00 for the costs of "seeking remedy prior to this action," $3,000.00 for "reasonable attorney's fees and for legal research," $5,000.00 "to reimburse Petitioner for income lost due to time spent seeking remedy and bringing this action," $10.00 per day from the day application was made for license for "inconvenience and added costs to Petitioner caused by Respondent's failure to renew said license," and $35,000.00 "punitive damages," and that the Respondents be held collectively and severally and individually for these costs and "damages."

The Appellant thereafter contacted the Assistant Attorney General representing the Motor Vehicle Division and Tax Commission, and requested that the matter by submitted on briefs without oral argument, which was done. The Appellant also supplied to counsel a proposed stipulation of facts, which was agreed to without modification. The stipulation of facts was submitted to the Court and its decision was based thereon. (See the Opinion of the Wyoming Supreme Court for the text of the stipulation.) No additional facts were placed in the record by Appellant or

by the Respondents. There were no facts presented to the Court supporting or justifying an award of damages or attorney fees, nor was any evidence offered that any person, including the Appellant, had been compelled to sign the Information Practices Statement, nor that any person had suffered any injury to his or her rights or interests flowing from the signing of one of these forms.

The District Court of the First Judicial District entered a letter decision on May 1, 1981, concluding that Appellant was correct in his assertion that the Division lacks statutory or rule authority to require disclosure of social security numbers by license applicants. Judge Maier concluded that the Writ should be issued. Thereafter the parties submitted proposed forms of judgment; the Appellant's proposed form of writ and judgment included a requested award of damages. The Appellant also wrote to the Court on May 26, 1981, requesting an award of damages. The Appellant did not supply any authorities to the Court supporting his contention that the Information Practices Statement authorized unconstitutional or overbroad investigations by the Motor Vehicle Division, or that such investigations infringed upon his constitutionally protected rights of privacy.

The District Court entered an order on June 24, 1981, allowing a Peremptory Writ of Mandamus directing the Respondents to issue a driver's license to Appellant without disclosure of his social security number. The Court also found that the Division has statutory authority to require license applicants to consent to the Division's

obtaining records dealing with applicants' qualifications to safely operate motor vehicles.

On July 8, 1981, District Judge Maier wrote to Appellant that the Court would not approve his proposed form of writ because it included attorney's fees and legal research "costs," among other things, in the "bill of costs."

The Appellant filed a notice of appeal to the Supreme Court of the State of Wyoming on July 6, 1981.

On September 25, 1981, the Division of Motor Vehicles issued a Class C driver's license to the Appellant.

On February 11, 1982, the Supreme Court of the State of Wyoming issued its opinion affirming the Order and Judgment entered by the District Court.

On March 30, 1982, the Appellant filed his Notice of Appeal to the Supreme Court of the United States.

(The opinions and orders of the Wyoming Courts are attached hereto as Appendix A.)

JURISDICTION

It appears that the Appellant has proceeded improperly in lodging an appeal rather than petitioning the Court for a Writ of Certiorari. The Wyoming Supreme Court has not declared invalid any federal law, nor has the court upheld the validity of any state statute challenged by the Appellant as being repugnant to the Constitution or other laws of the United States. Thus an appeal does not lie as provided at 28 U.S.C. Section 1257 (1) or (2).

The Appellant consistently attempted, before the trial court and the Wyoming Supreme Court, to claim certain rights under the Constitution of the United States. To the extent that these claims may have been perfected, denial of the same may be brought before this Court through a Petition for Writ of Certiorari, 28 U.S.C. Section 1257(3). Appellees argue below that these claims have not been perfected and that certiorari should not be granted herein.

Further, for reasons stated below, Appellees believe that Appellant has not raised any substantial federal question that requires this Court's attention through appeal or writ of certiorari. Accordingly, whether the Appellant's papers are treated as bringing an appeal or petitioning for certiorari is not significant in either case, as the lack of a substantial federal question is dispositive. Flournoy v. Wiener, 321 US 253, 262, 263.

The Wyoming courts did not need to consider or decide the validity of any state or federal statute, as

none were challenged by the Appellant.

The Appellant has presented issues which may appear to contain claims of rights or privileges under the United States Constitution. To the extent that these claims exhibit substantive merit, they might support the granting of certiorari. The state courts, however, decided the issues raised below by reference to state law. Appellees believe that, with respect to each issue raised by the Appellant, there exists an adequate non-federal basis for decision by the Wyoming Courts.

Further, as procedural and jurisdictional matters, Appellant's claims of federal-law rights were not properly presented below. For example, the Appellant offered no evidence before the trial court that supports a claim for damages, or that supports a claim for declaratory judgment that his "right of privacy" was invaded or limited. (Questions I and IV as presented by the Appellant.) This lack of proof led the trial court and the Wyoming Supreme Court to consider these claims to be moot. Accordingly, they did not choose to render an advisory opinion as to whether the Appellant's rights of due process might have been infringed upon. (Question II as presented by the Appellant.)

For another example, the Appellant claims a denial of due process by the Appellees' failure to provide a hearing on the matter of denial of his license application. Yet the Appellant never requested a hearing. The Appellant has shown no basis for an automatic hearing without request. Whether a hearing request would have been denied

is not a ripe issue. The disposition of the Appellant's claims rest upon the following non-federal grounds:

I. As to whether the Appellant must sign an Information Practices Statement, the issue is moot, as the Appellant has signed the form. Further, the Appellant has presented no evidence that any rights have been invaded, denied or threatened by the Appellees' use of the form.

II. As to whether due process was denied to the Appellant by a "rule" requiring his signing of the form, this issue is moot because the Appellant signed the form. Again, no evidence has been presented indicating that the Appellant has been deprived of any right or privilege (with or without due process) with respect to the Appellees' use of the form. The "due process" issue was raised in the Appellant's pleadings but no proof to support his argument was adduced.

III. As to whether the failure to provide a hearing denied the Appellant some rights or privileges without due process, the issue has not been properly presented. No request for hearing was ever received by the Appellees, and it would be speculative to argue that such a request would be turned down.

IV. As to whether damages may be awarded without proof, the Appellant arguing that his verified petition for a writ of mandamus is equivalent to proof, the Wyoming courts found that he failed to meet his burden of proof. As a matter of state and federal law, competent evidence is required to support an award of damages.

V. As to whether the Appellant, appearing pro se, is entitled to attorney's fees, the issue is governed by state law unless the litigant prevails on a question of federal right. The record reflects no success by the Appellant with respect to his federal-law claims. Further, the Appellant incurred no costs for professional legal services.

Questions Presented by the Appellant

> I. Whether the Appellees may require, as a condition for obtaining a Wyoming Driver's License, that all applicants sign an "INFORMATION PRACTICE STATEMENT" which is a waiver of privacy giving the Appellees permanent, irrevocable permission to obtain all personal information from any source which they wish to obtain.

Two comments are in order prior to analyzing this issue for presence of a federal question. First, Appellees regard this description of their use of the named form as exaggerated. Generally the Division of Motor Vehicles (DMV) attempts to obtain as much needed information as possible directly from applicants for driver's licenses.

Second, the Appellant placed no evidence in the record showing that the DMV uses the form to violate any license applicant's protected zones of privacy, however such zones may be defined in terms of state or federal law.

Most importantly, the Wyoming Supreme Court found the Appellant's complaints about use of the form to be moot. The Appellant has twice signed the form, once when originally licensed and again in December, 1978. This fact is shown in the record before the Wyoming Supreme Court and is referred to in that court's opinion. No federal question is implicit in a dispute of that court's finding of mootness. In the complete absence of evidence in the record below that the Appellant's "right of privacy," however broadly defined, had in fact been invaded or compromised, the Wyoming Supreme Court found no issue to be pre-

sented for decision.

Whether federal law defines rights of privacy for license applicants which state motor vehicle regulators may not invade is not properly framed as an issue here. The Appellant has consented to DMV access to relevant records, and has not shown that such consent has been abused or even used. Whether the Appellees may deny issuance of a license for failure to sign the form is not properly an issue here, for no such denial has occurred. The Wyoming Supreme Court wisely declined to render an advisory opinion to the DMV regarding this form. No invasion or denial of a ripe right claimed under the U.S. Constitution or the Federal Privacy Act has occurred, thus this Court has not been presented with an appealable issue.

II. Whether due process of law was denied when the rule requiring the signing of the "Information Practice Statement" was imposed without following the rule making procedures required by the Wyoming Administrative Procedures Act.

This issue involves interpretations of the Wyoming Administrative Procedures Act. Whether due process is involved at all requires a search for a property or liberty interest or other right of similar stature, and a further search for a deprivation of such a right or interest held by the Appellant. The Appellant "raised" the due process issue in his pleadings, but failed to show facts or law indicating that his rights, interests or entitlements under state or federal law were in fact injured or compromised without due process. Without such a showing, the issue lacks foundation in federal law. Even if the Appellant had shown some injury, the interpretation of the rule-making requirements of the Wyoming Administrative Procedures Act is a matter of state law, unless an invasion of federal constitutional right is shown.

The courts treated this issue as mooted by the Appellant's voluntary signing of the form. The courts declined to decide whether rulemaking was necessary to provide the Appellant due process. The issue was poorly presented. If the courts had addressed the issue, it would doubtless have examined the Wyoming Administrative Procedures Act (W.S. 9-4-101, et seq,) and the due process requirements of the state Constitution, Article I, Section 6. It would be premature to speculate as to how the Wyoming courts would determine these issues in a proper

case.

Because the question framed by the Appellant refers generally to due process and specifically to state statutes governing rulemaking, it cannot be said that the question does not refer to state law, particularly the state constitutional due process clause. See Bowe v. Scott, 233 U.S. 658, 665, (1914).

It cannot be said that the decision of the Wyoming courts with respect to this question does not rest upon an adequate non-federal ground. Indeed, the courts declined to pass on the issue. When the state's highest court fails to decide a federal question, it may be assumed that the omission was due to lack of proper presentation. Street v. New York, 394 U.S. 576, 582 (1969); Fuller v. Oregon, 417 U.S. 40, (1974).

III. Whether due process of law was denied when the Appellees failed to provide the Appellant a hearing, for a period of over one and one-half years, to review the denial of his license application, as required by the Wyoming Administrative Procedures Act.

Arguably a license applicant who is denied renewal or issuance of a driver's license might be entitled to a hearing regarding the grounds for denial. The contours of such a hearing might include issues of who is entitled, under state law, to issuance of a license, and grounds, under state law, for denial of a license. If denial of a license were said to transgress upon federally-protected rights or privileges, the denial might trigger certain rights of due process under federal principles. Unfortunately for the Appellant, these issues must be regarded as speculative and academic in this case, as the Appellant never requested nor demanded such a hearing. Whether the DMV would have denied the hearing is not an issue, nor is whether such a denial would deprive the Appellant of any rights or entitlements without due process. The Appellant preferred to write letters and place telephone calls and make informal personal visits, in abundance, to the DMV offices in the state capital. He chose not to request a hearing, but now complains of the failure of the DMV, sua sponte, to give him a hearing anyway.

No federal question of denial of due process is presented by this state of facts.

IV. Whether the facts in the case are sufficient to warrant the award of general damages, and whether the signed, sworn, and notarized statement by the Appellant concerning, the harm caused by the Appellees refusal to issue the license was sufficient and proper to warrant the award of special damages.

Again, in a proper case, a license applicant who is denied driving privileges might be entitled to prove and recover damages. Such an issue would be resolved by reference to state laws defining the contours of rights to operate motor vehicles on public highways, and state-law rules of damages. Whether such damages might include compensation for injury to federally-protected rights (illustrative examples do not readily come to mind), thus putatively amounting to a cause of action under 42 USC Section 1983, is not an issue here.

The plain fact is that the Appellant failed to offer any evidence of damages, special, general or otherwise. This failure is grounds, under state law, for a decision to not award damages, a principle also followed in federal courts. See, in the context of 42 U.S.C. Section 1983 actions, Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980), citing Carey v. Piphus, 435 U.S. 247, (1978).

Even if, arguendo, the Appellant had suffered damages to his federally-protected civil rights, his failure to prove them bars recovery.

Where the judgment of a state court rests in part, or in whole, on a non-federal ground adequate to support

it, the Court will not consider the correctness of the decision which the state court also made of a federal question. Flourney v. Wiener, 321 U.S. 253, 262 (1943). The Wyoming Supreme Court's decision on this issue is adequately and properly grounded in state law.

V. Whether a litigant in a civil rights suit acting pro se is entitled to the award of reasonable attorney's fees under 42 U.S.C. 1988.

42 U.S.C. Section 1988 authorizes award of attorney fees to those parties who prevail on a substantial question of Constitutional or federal right. Barrett v. Kalinowski, 458 F.Supp. 689, 704 (M.D.Pa.,1978); Hughes v. Repko, 578 F.2d 483 (3rd Cir. 1978).

The Appellant has incurred no legal expenses, at least by traditional definition, but he claims to have spent considerable time and some money to bring these issues to their present status. The Appellees do not dispute that the Appellant has put a lot of time into these appeals. The Wyoming Supreme Court affirmed the trial court's denial of professional fees, affirming for the reason that the Appellant paid no fees.

The Appellant raises the issue for the court, as a federal question: Is a litigant Pro Se entitled to an award of fees under 42 U.S.C. Section 1988? Unfortunately, the issue is not properly presented in the case, for the Appellant has not prevailed on any federal-law right warranting an award of fees. If the Appellant had prevailed on a 42 U.S.C. Section 1983 claim or another comparable federal issue, and had then been denied fees, the issue of "pro se" fees would be clearly presented for the court's attention.

But because the Appellant did not prevail on any federal issue, the question of award of attorney fees

remains a state-law question, and in Wyoming, fees are not generally awarded.

CONCLUSION

The judgment at the Wyoming courts rests on state law regarding:

1. Mootness;
2. Quantum of proof,
3. Administrative interpretations, and
4. Attorney's fees.

It is therefore submitted that the Appellant has presented no substantial federal question for the decision of this Court. The appeal should be dismissed or, if treated as a petition for writ of certiorari, the petition should be denied, and the judgment of the Wyoming courts should be affirmed.

Respectfully submitted this 9th day of July, 1982.

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OCTOBER TERM, A.D. 1981

February 11, 1982

THE STATE OF WYOMING, ex rel. DAVID J. SCHOLL,

Appellant (Relator),

v.

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as The Wyoming Tax Commission, and DANIEL C. LEACH, JR., as an individual and as Director, Motor Vehicle Division, Department of Revenue and Taxation, State of Wyoming,

Appellees (Respondents).

No. 5564

Appeal from the District Court of Laramie County, the Honorable Joseph F. Maier, Judge.

David J. Scholl, appellant, pro se.

Steven F. Freudenthal, Attorney General; Ron Arnold, Assistant Attorney General; and Randall T. Cox, Assistant Attorney General, Cheyenne, for appellees.

Before ROSE, C.J., and RAPER, THOMAS, ROONEY and BROWN, JJ.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Second. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82001 of any typographical or other formal errors, in order that corrections may be made before final publication in the permanent volume.

BROWN, Justice.

This appeal is from that portion of a judgment and order of the district court dated June 24, 1981, denying appellant damages and attorney fees.

We will affirm.

Appellant specifies the issues: 1/

"1. Is the rule requiring signing of the 'Information Practice Statement' on appellees [sic] form 'MVDL-705 (2-80)' authorized, implicitly or explicitly, by Wyoming Statutes?

"2. If authorized by statutes, is the requirement that such a statement must be signed in order to obtain a Wyoming Driver's License a 'rule' under the definition of the Wyoming Administrative Procedure Act? If so, may the rule be imposed without adoption in accordance with the Wyoming Administrative Procedure Act?

"3. If authorized and properly adopted as a rule, is the 'Information Practice Statement' an unconstitutionally overbroad waiver of rights to privacy and confidentiality?

1/ Appellees characterize the issues slightly different ly:

"1. Whether, under the facts as stated, the Appellant may obtain an award of damages, despite his complete failure to offer evidence of damages to the District Court.

"2. Whether any rights protected by the U.S. Constitution and federal statutes were diminished by the Appellees' acts regarding Appellant.

"3. Whether sovereign and official immunity bar a recovery of damages by Appellant in light of his non-compliance with the Wyoming Governmental Claims Act and statutes of limitations.

"4. Whether the District Court erred in denying mandamus relief with respect to the information practices of Appellees.

"5. Whether the District Court erred in denying Appellant attorney fees."

"4. Is appellant entitled only to court costs? Or h!s [sic] he entitled to his costs seeking administrative remedy, his costs in preparing and bringing the action, and compensation for damages incurred due to Appellees [sic] actions and failures to act, including punitive damages?"

Appellant David J. Scholl applied for renewal of his Wyoming driver's license on or about December 13, 1978. The local Motor Vehicle Division officer requested that appellant complete the standard license application form, but appellant refused to supply his social security number. The officer refused to issue appellant a driver's license because the form was not complete; however, appellant successfully completed all other requirements for issuance of a driver's license, including the examination.

Appellant also protested the requirement that license applicants must sign an "Information Practices Statement," which is part of the application for driver's license form MVDL (11-77). (See Appendix.) Appellant signed the Information Practices Statement on the date of his application, but added the legend, "I do not waive any Constitutional rights."

Appellant communicated to the Motor Vehicle Division and to the members of the Wyoming Department of Revenue and Taxation his reasons for refusing to disclose his social security number, which reasons are religious. The Motor Vehicle Division Director and the Wyoming Department of Revenue and Taxation upheld the action of the field officer in refusing to renew appellant's driver's license.

Appellant then applied to the district court for a writ of mandamus to compel the Motor Vehicle Division to issue a license to him without disclosure of the social security number. He also argued in the petition that signing of the Information Practices Statement by license applicants is not authorized by law and constitutes an invasion of constitutionally protected rights of privacy. The Motor Vehicle Division agreed to issue a license to appellant pending resolution of the matter in district court. The district court issued an order on July 11, 1980, permitting appellant to operate a motor vehicle pending the final determination of the matter on the merits. Appellant did not have a valid Wyoming driver's license during the interim period from December of 1978 to July 11, 1980.

Appellant filed his Amended Petition for Writ of Mandamus on July 7, 1980, in which he asked for relief in several forms, including:

1. That the Motor Vehicle Division issue a renewed license to petitioner;

2. That the Division invalidate and remove from its files all Information Practices Statements signed by applicants for licenses, and that subsequent applicants must be informed that they are not required to sign the Information Practices Statement;

3. That the the Division cease requiring applicants to supply social security numbers on license application forms;

4. That the Division reimburse Petitioner for costs of bringing the action and for damages, including $150.00 for the costs of "seeking remedy prior to this action," $3,000.00 for "reasonable attorney's fees and for legal research," $5,000.00 "to reimburse Petitioner for income lost due to time spent seeking remedy and bringing this action," $10.00 per day from the day application was made for license for "inconvenience and added costs to Petitioner caused by Respondent's failure to renew said license," and $30,000.00 "punitive damages," and that the respondents be held collectively and severally and individually for these costs and "damages."

Appellant and an assistant attorney general entered into a stipulation and submitted the matter to the district court on the stipulation and briefs without oral argument. The Stipulation was as follows:

"1. That on or about December 13, 1978 David J. Scholl did apply for renewal of his Wyoming Driver's License at the Buffalo office of the Department of Motor Vehicles.

"2. That Mr. Scholl did pass all required examinations for renewal of said license.

"3. That Mr. Scholl's driving record shows him to be in good standing and eligible for renewal of his license.

"4. That Mr. Scholl objected, and still objects, to the use of a Social Security number on the application and license, and to the signing of a waiver which authorizes the Department to obtain information from any source which the Department believes may relate to driving records.

"5. That the Department's agent refused to accept the application and issue a new license

without the Social Security number and such a signed waiver.

"6. That the agent's actions were based on a rule, regulation, or memo issued by the department.

"7. That Mr. Scholl has made numerous and repeated efforts to have his license renewed, including telephone calls and letters to the Dirctor [sic] of the department, to each of the Tax Commissioners, and to the Attorney General's Office. (See copies of letters on file in the [illegible] District Court.)

"8. That as late as June 25, 1980, no copy of the rule, regulation, memo, or interpretation of the law which the department invoke [sic] against Mr. Scholl to compel disclosure of his Social Security number and signing of a waiver in order to renew his license was on file in the Office of the Secretary of State.

"9. That each of the defendants is aware, or should be aware, of Mr. Scholl's objections based on religious beliefs and assertion of Constitutional Rights, as well as statutory procedures.

"10. That the department continues to refuse to issue a renewed license to Mr. Scholl without use of the Social Security number and signing of the above mentioned waiver."2/

The district court concluded in its decision letter that the Motor Vehicle Division lacked statutory or rule authority to require disclosure of social security numbers by license applicants and that the writ should be issued. The appellant and State could not agree on the form of the writ because of appellant's damage and attorney fee demand.

The district court entered its order on June 24, 1981, allowing a peremptory writ of mandamus directing respondents to issue a driver's license to appellant without his social security number

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2/ Apparently the stipulation did not accurately reflect the Motor Vehicle Department's action with respect to the Information Practices Statement. Appellant did sign the statement on December 13, 1978; therefore, the license was not denied because of his failure to sign the statement as may have been suggested by the Stipulation. Appellees took the necessary steps to make this correction in the record on appeal.

on the license. It denied appellant's claim for damages, but allowed him to recover his costs. The court also found that the Motor Vehicle Division has statutory authority to require license applicants to sign the Information Practices Statement.

Appellant filed a timely notice of appeal.

I

In his brief appellant addresses numerous issues in great detail. Appellee addresses these issues and raises other matters by way of defense, such as sovereign and official immunity, Wyoming governmental immunity, statute of limitations, filing of claims with the State Auditor, and others. In their briefs the parties discuss the requirement of social security number disclosure; however, appellant prevailed on that issue in the district court and the State has not appealed that ruling.

The issue raised by appellant regarding signing the Information Practices Statement is moot. Appellant signed the statement voluntarily when he applied for a license, although he noted that he was not waiving his constitutional rights. He does not claim that he was coerced. Further, he does not allege any damage resulting from signing the statement. The record does not indicate that the Motor Vehicle Division ever used this statement for improper purposes, or for any purpose. Appellant is apparently asking this Court to declare that he and other future driver's license applicants not be required to sign an Information Practices Statement. We decline to address that issue, if it is an issue, because our thoughts on that matter would only be advisory.

The consequences of an applicant's refusal to sign the Information Practices Statement have never been at issue in these proceedings. We believe that the only issue properly raised by appellant is the refusal of the district court to allow appellant damages and attorney fees.

II

Appellant alleges that he was damaged because appellees violated many of his United States constitutional rights. He cited specific constitutional provisions in his Petition for Writ of Mandamus. He did not mention 42 U.S.C.A. § 1988 (1981) in his Petition for a Writ of Mandamus, but does in his brief to this Court, attempting now to invoke that section as authority for his claim to damages. He also claimed that Wyoming constitutional and statutory rights were violated by appellees, and again directed the court's attention to specific constitutional and statutory provisions.

We need not address the propriety of appellant's action for damages. We will assume for purposes of this opinion that in a

proper case damages could be awarded, but this case should be decided on the narrow issue of proof of damages.

Appellant requested that this case be submitted to the district court on stipulated facts and briefs. Damages are not mentioned in the stipulation, and nothing is said about damages unless telephone calls made by appellant and letters written suggest some expense. However, the Stipulation did not indicate a dollar expense, nor did it say that he incurred any expense. Appellant did allege expenses and indicate a dollar figure in his Petition for a Writ of Mandamus, but that is pleading, not evidence. There was no testimony taken in this case and the only evidence before the district court was the parties' stipulation.

Appellant has entirely overlooked the necessity of proving damages. He apparently equates pleading damages with the proof of damages. We know of no cases nor statutes that permit damages based solely on an allegation of damages. Damages cannot be presumed. One who claims damages has the burden of proving them. 3/ Consequently, absent proof, a claim for damages fails. Quinlan v. Jones, 27 Wyo. 410, 198 P. 352 (1921). See also West's digest, § 163(1)(3) "Damages" for scores of cases supporting this fundamental principle:

> * * * * Generally speaking, the party who would lose if no evidence were presented as to an issue regarding damages is charged with the burden of proving that issue. As a rule, the burden of proof is upon the plaintiff to show the fact and extent of the injury and to show the amount and value of his damages, whether the action is for a breach of contract or for tort. In a damages action, where issue is taken the plaintiff must show not only that he suffered damage because of the wrongful act complained of, but also that it would not have been incurred except for the wrongful act of the defendant, if he would recover more than nominal damages. * * * * 22 Am.Jur. Damages § 296, p. 392 (1965).

Appellant's claim for damages must fail in the absence of any proof.

3/ There may be some exceptions to this abstract rule such as nominal damages, liquidated damages, damages provided for by statute, etc. However, appellant has not brought to our attention applicable exceptions, nor does he claim any exceptions from the general law. We have searched for an exception that might be applicable here, but know of none.

III

Appellant appeared pro se at all stages of this case. He nevertheless claims attorney fees in connection with the proceedings in the district court and on appeal. A flaw in appellant's theory is that he has not only failed to prove attorney fees, but does not even claim that he incurred such fees. Although he claims attorney fees, appellant is really claiming the value of his time in connection with this case. He does not indicate how much time he spent. Supplying that deficiency, however, would not enhance his cause.

The rule regarding attorney fees generally is set out in Alyeska Pipeline Service Company v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975):

> "In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser. We are asked to fashion a far-reaching exception to this 'American rule'; but having considered its origin and development, we are convinced that it would be inappropriate for the Judiciary, without legislative guidance, to reallocate the burdens of litigation in the manner and to the extent urged by respondents and approved by the Court of Appeals."

See also Downing v. Stiles, Wyo., 635 P.2d 808, 817 (1981).

Apparently appellant seeks to recover "attorney fees" for his suit, under 42 U.S.C.A. § 1988, supra, which provides in part:

> " * * * In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The purpose of statutory provisions for attorney fees is to encourage those who otherwise could not afford legal counsel to hire professional assistance, rather than forego their "day in court." Appellant was not discouraged by a perceived lack of financial resources; he had his day in court by bringing the action pro se. The purpose of encouraging employment of counsel could not possibly be advanced by awarding the appellant fees for professional services in this case. The Civil Rights Attorney's Fees Act does not justify a payment when it is not needed as an incentive for legal services.

The question of whether a litigant appearing pro se is entitled to attorney fees under 42 U.S.C.A. § 1988, supra, was addressed by the Eighth Circuit in Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979). The court noted that the legislative history of 42 U.S.C.A. § 1988, supra, reveals that its purpose is not to compensate pro se litigants, but to provide for counsel fees in order to give private citizens a meaningful opportunity to vindicate their rights:

> "In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, . . . [they] must have the opportunity to recover what it costs them to vindicate these rights in court.
>
> "S.Rep.No.49-1011, 94th Cong., 2d Sess. 2, reprinted in [1976] U.S.Code Cong. & Ad. News, pp. 5908, 5910. See Morrow v. Dillard, 580 F.2d 1284, 1299 (5th Cir. 1978); Sargeant v. Sharp, 579 F.2d 645, 648-49 (1st Cir. 1978); see also Pickette v. Milam, 579 F.2d 1118, 1121 (8th Cir. 1978); Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, 558 F.2d 861, 870-71 (8th Cir. 1977). This section presupposes a relationship of attorney and client that is lacking in the instant case. The district court properly denied Davis' application for attorney fees." Davis v. Parratt, supra, at 718.

In Lovell v. Snow, 637 F.2d 170, 171 (1st Cir. 1981), the court said:

> "We have recently held that attorney fees may not be awarded to pro se plaintiffs pursuant to the attorney fee provisions of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552(a)(4)(E). Crooker v. United States Department of Justice, 632 F.2d 916, 920-22 (1st Cir. 1980). Our starting point there, as here, was the intent of Congress. We identified the dominant purpose of the FOIA's attorney fee provision as the removal of 'the obstacle of attorney fees [so that] all litigants have 'access to the courts to vindicate their statutory rights.' [Citation omitted.] Precisely the same policy lay behind the enactment of the Civil Right Attorney's Fee Awards Act, 42 U.S.C. § 1988. [Citations omitted.] In light of this identity of statutory policies, the reasoning which we set forth in Crooker, supra, 632 F.2d

> at 920-22, fully applies in the case of a pro se plaintiff's request for attorney fees pursuant to 42 U.S.C. Section 1988. It need not be repeated here."

See also Owens-El v. Robinson, 498 F.Supp. 877 (W.D.Pa. 1980); and Rheuark v. Shaw, 477 F.Supp. 897 (N.D.Tex. 1979), cert. denied 101 S.Ct. 1392 (1981). Both deny attorney fees because the litigants appeared pro se.

The appellant in this case has not retained counsel. He has incurred no actual expense for professional services, and an award of "fees" for professional services to appellant would constitute a windfall. The district court did not award attorney fees, and appellant has shown no reasonable grounds to reverse the district court.

Affirmed.

APPENDIX

"INFORMATION PRACTICES STATEMENT
"DRIVER'S LICENSE RECORDS

"1. Authority for collection of the information is the Driver's License Act, Sections 31-276.1 through 31-276.37 W.S.1957 as amended.

"2. The principal purposes for which this information is intended is to determine if you are qualified for a driver's license and able to operate a motor vehicle competently.

"3. This information is used to determine your qualifications for a driver's license, compile statistical data and law enforcement purposes.

"4. If the information requested is not furnished, you may not be able to establish your qualifications for a driver's license.

"I understand that this one time information practice statement will apply to all requests for personal information made by the Motor Vehicle Division of the Wyoming Department of Revenue and Taxation and commissioned law enforcement personnel of the State of Wyoming and of the United States of America. I understand that this form which I have signed, will be placed in my vehicle records as evidence of this notification. This is my consent to obtain information from any source which may affect my qualifications for a driver's license. I understand I can receive additional copies upon request for my own purposes.

"DEPARTMENT OF REVENUE & TAXATION
"RULE AND REGULATION

_____
"Signature of applicant

"Date signed:_____"

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

CIVIL DOCKET NO. 91-143

THE STATE OF WYOMING, upon the relation of DAVID J. SCHOLL,

Relator,

v.

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as

THE WYOMING TAX COMMISSION

and

DANIEL C. LEACH, JR., as an individual and as

DIRECTOR, MOTOR VEHICLE DIVISION DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING,

Respondents.

FILED

JUN 24 1991

Carrie E. Bishop
Clerk of the District Court

JUDGMENT AND ORDER OF ALLOWANCE OF PEREMPTORY WRIT OF MANDAMUS

Relator's Petition for Writ of Mandamus was filed in the above entitled matter on the 3rd day of June, 1980, and the matter having been set for hearing before the Court on the 18th day of June, 1980, at 3:00 P.M., and said hearing having thereafter been continued by Order of the Court and based upon a stipulation and agreement of the parties by which the parties stipulated and agreed to the facts and to a submission of the matter upon briefs, and the Court having thereupon fully reviewed the pleadings, the stipulation of facts and the briefs and arguments of counsel and being now fully advised, the Court finds as follows:

1. That relator, David J. Scholl, did apply for renewal of his Wyoming driver's license on or about December 13, 1978;

2. That relator did successfully complete his required examination and all acts necessary for the issuance of a driver's license;

3. That respondents refused to renew relator's driver's license on the basis that relator refused to disclose his social security number and refused to allow the same to be placed on his driver's license;

4. That the relator further refused to give his consent to the respondents so that the division might obtain records dealing with his qualifications to safely operate a motor vehicle;

5. That the respondents relied on the provisions of §31-7-111, W.S., 1977 Republished Edition as the basis for their requirement that relator furnish a social security number to be placed on his driver's license;

6. That §31-7-106(e), W.S., 1977 Republished Edition, expressly mandates that the division shall issue a driver's license to each qualified applicant not later than thirty (30) days from the date of application therefor;

7. That there is no statute, either expressly or by necessary implication, granting to the Motor Vehicle Division the right to require on the application form a disclosure of an applicant's social security number;

8. That the respondents did not promulgate any rules under the rulemaking authority of administrative agencies as provided in Wyoming statutes, with regard to the matter before the Court;

9. That this matter was submitted to the Court on a stipulated set of facts and there were no other hearings or facts before

the Court upon which findings can be made except by the stipulation in the file;

10. That this Court entered an Order on July 11, 1980, which permitted relator to operate a motor vehicle pending the final determination of this matter on the merits;

11. That §31-7-119(b), W.S., 1977 Republished Edition, allows the Division to require the applicant to consent to the Division obtaining records dealing with the applicant's qualifications to safely operate a motor vehicle;

12. That the relator is a party beneficially interested in this matter; that relator has no adequate remedy at law, and that he is entitled to the entry of a peremptory writ of mandamus.

IT IS THEREFORE ORDERED that judgment be, and the same is hereby, entered in favor of the relator and against the respondents and that a Writ of Peremptory Mandamus is granted; and

IT IS FURTHER ORDERED that the Clerk of this Court shall issue a peremptory writ of mandamus directed to the respondents ordering and directing them to issue a driver's license to relator without placement of relator's social security number on the license.

IT IS FURTHER ORDERED that relator's claim for damage be, and the same is hereby denied and that relator shall recover his costs herein incurred.

Done in open court this 24th day of June, 1981.

STATE OF WYOMING COUNTY OF LARAMIE SS. CERTIFICATE

I Gertie E. Bishop, Clerk of the District Court in and for Laramie County [illegible] do hereby certify that the foregoing is a full true and [illegible] of the original thereof as the same remains on file in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 24 day of June, 19 81

GERTIE E. BISHOP
Clerk of District Court

JUDGE